



December 28, 2021

Via Electronic Filing

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

RE: WC Docket No. 21-450 – Reply Comments of the California Emerging Technology Fund on Transition from Emergency Broadband Benefit to the Affordable Connectivity Program

Dear Secretary Dortch:

In accordance with Section 1.419 of the Commission’s Rules, the California Emerging Technology Fund (“CETF”) hereby files Reply Comments on the Wireline Competition Bureau’s Notice seeking comment on the transition from the Emergency Broadband Benefit (“EBB”) program to the Affordable Connectivity Program (“ACP”), released on November 18, 2021 (“Notice”). CETF had filed Opening Comments and now replies to other parties’ Opening Comments herein.

At the outset of their comments, the City of Boston, Montgomery County, Washington, D.C. and the Texas Coalition of Cities for Utility Issues (“City of Boston et al.”) raise an important cautionary note, highlighting that the transition of the EBB to the ACP will take place in the middle of the school year and at the onset of another possible wave of COVID. “There appears to be a belief by many that the programmatic changes will not result in significant disruptions in the lives of those who can least afford such interruptions. . . [We] request that the Commission exercise its own version of the

Hippocratic Oath of ensuring first that it do no harm by automatically enrolling all EBB participants in ACP, and for at least the remainder of the school year, that USDA’s “Community Eligibility” program qualifications be retained.”<sup>1</sup> CETF is in accord. Thus, a reasonable transition period must be provided for the FCC’s new ACB rules to become effective,<sup>2</sup> and no existing EBB subscriber should be removed until ACP systems are ready. The worst thing that could happen is for the plug to be pulled to critical broadband service to over 8.9 million EBB households (as of late December 2021) that rely on it for distance learning, telework and health information.

## II. Summary

- The FCC should reject a proposal to allow providers to only sign-up *new* customers for ACP plans.
- The FCC should include as “bulk purchasers” anchor institutions such as schools and libraries in order to assist them in transitioning service for unconnected students from the Emergency Connectivity Fund (“ECF”) to the ACP.
- The FCC should include non-profit technology refurbishers in the definition of “participating providers” to allow such refurbishers to provide eligible connected devices directly to eligible households. The FCC should put a strong focus on the problem of bringing more laptops, tablets and PCs to eligible families, as there is a serious gap in hardware available. Not all participating providers are providing connected devices to households.
- A simple notice should suffice to opt-in to the ACP by an eligible EBB subscriber. An ‘opt-out’ policy is only appropriate in circumstances where there is no rate increase for the EBB subscriber who moves to an ACP program. No EBB subscriber should be removed from the program until the new ACP program is ready to receive them without any interruption in service.

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<sup>1</sup> Comments of the City of Boston, Massachusetts, Montgomery County, Maryland, Washington, D.C. and the Texas Coalition of Cities for Utility Issues, Dec. 8, 2021 (“City of Boston et al. Comments”), at p. i.

<sup>2</sup> Comments of Frontier Communications Corp, Dec. 8, 2021 (“Frontier Comments”), at p. 2 (“The Commission’s transition should extend until the Commission’s new ACP rules become effective, and it should provide adequate time for carriers to implement the new rules.”)

- In terms of what an “established program” is of a participating provider, CETF urges the Commission to heed the Infrastructure Act’s broad language allowing “an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider at the same terms available to households that are not eligible households.” This should include legacy or grandfathered plans. Calls to allow “tailor made” ACP service offerings should be rejected. Second class ACP plans with low data allowances and slow speeds are contrary to the plain language of the Act.
- CETF urges focus on how to establish eligibility for those enrolled in the Special Supplemental Nutritional Program for Women, Infants and Children (“WIC”), a new eligibility criterion for the ACP. Direct data base connections are advisable, and the FCC should consult with WIC administrators to encourage some type of enrollment evidence be provided in the short run.
- CETF joins with parties who oppose intrusive and unnecessary customer monitoring in order to establish non-usage of an ACP service.
- Eligible subscribers on a legacy or grandfathered service plan should not be forced off such a plan in order to receive an ACP benefit from a participating provider.
- The FCC has discretion to order an MSS if it desires for the ACP. If an MSS is desired, the FCC should use a process similar to the MSS for the federal Lifeline program to develop a home-based (not mobile) MSS for the ACP. Such an MSS should be designed to be adequate for the modern applications used by households of different sizes.
- Homeless centers should be added as eligible multiple dwelling units (MDUs) allowed to purchase in bulk for the unhoused persons suffering from extreme poverty that they serve. This is important for both unhoused adults looking for employment, and government/social services, and for unhoused children who need Internet access and connected devices for educational purposes.
- Expand the MDU definition to include multi-family service organizations, like schools and libraries. Anchor institutions have been serving unconnected households with the ECF program, which is running out of funds. Thus, allowing schools and libraries to purchase in bulk as MDU’s is critically important for these trusted community anchor institutions to provide a vital source of Internet service and devices.
- The FCC should allow associated equipment such as modems, routers, wireless hotspot devices and antennas to be funded by the ACP.
- Undue limitations on connected devices may not be prudent. While careful oversight is warranted, there should be flexibility given the circumstances of a household’s needs as to the provision of a device.
- CETF cautions the FCC as it considers a new “tablet definition proposed by CTIA. Any tablets for the ACP program must be able to connect to any Wi-Fi system, and have qwerty keyboards,

an adequate screen to perform Internet research, adequate memory, and video conferencing capabilities.

- Credit checks should be prohibited in the ACP program as to Internet service (even if in a bundle) and as to a connected device. Credit checks are barriers to low-income participation in the program which is contrary to the intent of the Act.
- “Upselling” and “downselling” policies should be focused on the protection of the eligible consumer. Disconnection for nonpayment after 90 days must comply with the language of the Act.
- CETF strongly urges required outreach by participating providers that is in-language and culturally sensitive to the target communities, in addition to robust efforts by the Commission and other federal agencies with eligibility programs. CETF urges the FCC to provide grants to experienced digital adoption non profit organizations to help advertise the program.

### III. Reply Comments

**Participating Providers.** In its comments, Frontier Communications requests that the FCC make clear that participating providers must only make ACP benefits available on broadband plans available to *new customers*.<sup>3</sup> CETF and Los Angeles County disagree.<sup>4</sup> There is no language in the Infrastructure Act<sup>5</sup> that supports limiting an existing eligible customer from requesting and obtaining an ACP benefit on its current plan from its current service provider. The Infrastructure Act states in pertinent part: “A participating provider . . . shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider at the same terms and available to households that are not eligible households. . . .”<sup>6</sup> To require an eligible household to

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<sup>3</sup> Frontier Comments, at p. 4.

<sup>4</sup> Comments of County of Los Angeles Internal Services Department, Dec. 8, 2021 (“LA County Comments”), at p. 6.

<sup>5</sup> Infrastructure Investment and Jobs Act, H.R. 3684, 117<sup>th</sup> Cong. (2021) (hereinafter cited as the “Infrastructure Act”).

<sup>6</sup> Infrastructure Act, Section 60502(a)(3)(B)(ii), Section 904(b)(7)(A).

change from an existing grandfathered or legacy plan to a new plan just to obtain the ACP benefit is disruptive and unnecessary, and there is no statutory support for this contention.

**Bulk purchasers.** Public Knowledge and Common Sense Media propose that the definition of “bulk purchasers” include schools and libraries, to help these anchor institutions transition from the Emergency Connectivity Fund (ECF) which is running out of funds to bringing their unconnected students and patrons onto the ACP.<sup>7</sup> CETF is in accord. Given that the two COVID-19 variants, delta and omicron, have extended the pandemic shelter-in-place requirements into year 2022, it is of critical importance for schools to be able to offer ACP to their unconnected students, otherwise these students will continue to lose ground in their educational progress during the continuing pandemic. Also, it is just as important for libraries to assist unconnected patrons in their communities with Internet access. CETF strongly advises that no household taking EBB service be disrupted during the 2021-2022 school year.

**Add Tech Refurbishers to Definition of “Participating Providers.”** CETF notified the FCC of its observation that there is a shortage of connected devices for eligible families under the ACP program. To date, only a few providers (one cable/broadband company and two small resellers/nonprofits) are making connected devices available under the EBB program in California. The Commission urgently needs to put a strong focus on promoting partnerships between participating providers and device providers to provide necessary connected devices to households who lack them.

CETF supports the proposal by the Digital Opportunity Network (“Digitunity”) to include non-profit technology refurbishers in the definition of “participating providers” so that they provide

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<sup>7</sup> Comments of Public Knowledge, Common Sense Media, Dec. 8, 2021 (“Public Knowledge/Common Sense Media Comments”), at pp. 2, 8-9 (explaining that the ECF program will end by June 2022, and that schools and libraries need to be clearly made eligible as bulk purchasers to obtain service for unconnected households with students in particular).

hardware directly to clients without needing to partner with a broadband provider and/or provide incentives for the broadband providers to partner with the refurbishers. Digitunity also suggests decoupling Internet service provision and provision of connecting devices to allow providers to provide Internet service only and refurbishers to provide connected devices only.<sup>8</sup> CETF finds this a worthy suggestion. In California, only one major Internet service provider and two small resellers/non-profit organizations provided eligible connected devices in tandem with EBB service. As the Digitunity comments noted, this change would increase choice, and decouple device provision from the ISP service provision. It would also provide an incentive for consumers not connected to the Internet to see ACP as an opportunity.

**Election Notices.** There was strong support by commenters to allow existing eligible providers to pivot from offering EBB offers to ACB offers with a simple election notice to USAC and/or the FCC.<sup>9</sup> This election notice will smoothly transition EBB consumers who are eligible for ACP. Some providers advocated for an “opt-out” mechanism for eligible EBB subscribers to move to ACB.<sup>10</sup> CETF supports the FCC’s Notice requirement for a consent to the transfer from the EBB program to the ACP program. The reason is simple. The EBB program gave a benefit of \$50 off from certain retail plans by eligible providers; the ACP program only provides a \$30 discount from an expanded set of retail plans by providers. In some cases, there is a rate increase as a result if the eligible households

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<sup>8</sup> Digital Opportunity Network Comments, filed Dec. 8, 2021 (“Digitunity Comments”), at pp. 1-2.

<sup>9</sup> Comments of AT&T, Dec. 8, 2021 (“AT&T Comments”), at pp. 22-24; Comments of CTIA, Dec. 8, 2021 (“CTIA Comments”), at pp. 2-3.

<sup>10</sup> ACA Connects Comments, Dec. 8, 2021 (“ACA Comments”), at p. 4 (adopt opt-out approval process for EBB-enrolled households to continue to receive service at reduced benefit amount at end of 60-day transition period); AT&T Comments, at p. 5-6 (allow EBB households to transition to ACP without affirmatively opting into ACP); NCTA Comments, at p. 6-8 (allow opt – out process, and enrolled EBB households should have continued service through 60-day transition without any further action on subscriber’s part per Act).

stay on the same plan. A customer should consent to any rate increase or have the option to change plans without a fee, thus any opt-out suggestion by commenting parties should only be acceptable in cases where there is no rate increase.

As to what is an “established program” by a participating provider,<sup>11</sup> CETF does not agree with ACA Connects which requests to have great flexibility to introduce service offerings “tailor made” for ACP households. ACA Connects argues this would make the program more cost efficient, bring more competitive choice, and better service options.<sup>12</sup> In fact, this proposal is contrary to the intent and the plain language of the Infrastructure Act, which allows “an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider at the same terms available to households that are not eligible households”. . . CETF is concerned that some providers may tailor make “skinny” ACP plans with low data caps, slow speeds and low-quality connected devices that are inadequate for the needs of an eligible household. While it may result in a free service to the subscriber, it may not serve his or her needs. Subscribers need enough Internet speed and data to handle everyday uses such as teleworking, video conferencing, telehealth applications, and distance learning. CETF wants to avoid second class ACP service offers to low-income households, while better off households enjoy first class service plans. Second class ACP service plans are contrary to the plain language of the Act which make it clear that the ACP program should deliver to eligible households’ robust retail plans generally available to the public. In its prior comments, CETF had recommended that providers be required to demonstrate that any Internet service offering for which they will apply for ACP reimbursement is generally available to the public.

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<sup>11</sup> See Notice at para. 11.

<sup>12</sup> ACA Comments, at pp. 11-12.

**WIC Verification.** As to the new qualifying program -- the Special Supplemental Nutritional Program for Women, Infants and Children (“WIC”) – for WIC, CTIA’s comments supported rules that promote WIC-participating households’ ability to obtain ACP benefits. CTIA suggested the FCC take steps to enable WIC eligibility to be verified through automated databases as soon as possible (with CDP, Conduent and Solutran), and to set reasonable standards for documentation required for manual verification in the meantime. CETF agrees with CTIA that direct database connections with the automated database keepers makes the most sense.<sup>13</sup> CETF notes, however, that using the last four digits of a WIC EBT card number is not adequate by itself; it must be checked against the database to ensure the holder is a currently enrolled WIC household. The FCC should work with the administrating agencies of the WIC programs to encourage them to provide some evidence of eligibility to eligible households or to download its eligibility database on a frequent basis, as a short-term workaround.

**Household Eligibility: Non-Usage Issue.** A number of parties opposed security and customer monitoring in order to establish non-usage of the ACP service. AT&T recommended that providers certify that every subscriber claimed has used the provider’s supported service at least once during the service month, and that the Commission avoid burdensome and requirements to demonstrate usage, which introduce security and customer monitoring concerns.<sup>14</sup> Free Press agrees there is no need for the FCC to resort to requiring spyware applications or use other intrusive methods to ensure ACP beneficiaries are using their supported connections. Better precautions would be to bar agent

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<sup>13</sup> CTIA Comments, at pp. 10-11.

<sup>14</sup> AT&T Comments, at p. 19.



commissions as to ACP service sales, and to put non-usage policy compliance burdens on providers.<sup>15</sup> CETF concurs that a third-party service is an unnecessary intrusion, especially since the companies can track usage by time period.

**Covered Services and Devices: Grandfathered and Legacy Plans.** Most providers urge that eligible Internet service plans should not include legacy or grandfathered plans, but only plans generally available to retail customers. CETF disagrees. Consistent with the Act's statutory language, if there are still retail customers on a legacy or grandfathered plan, the ACP discount should apply. The customer on the legacy or grandfathered plan should not be forced off this plan in order to receive the ACP. National League of Cities (NLC) agrees. In its comments, it argues that a household currently enrolled in a service that may be more affordable because it is a grandfathered or legacy offering should not be forced to change its plans in order to enroll for an ACP benefit. The ACP should not be a foil for providers desiring to move subscribers out of grandfathered or legacy plans, which are cost effective for the subscriber. Many legacy or grandfathered plans arose out of marketing efforts that make commitments that a provider once made but may no longer wants to keep.

**Minimum Service Standard.** Parties were split on whether minimum service standards (MSS) should be ordered as to the Internet service offerings eligible for the ACP. In its Notice, the Commission noted that the Act did not mandate an MSS; CETF agrees with the FCC that it has discretion to craft one if it believes it advantageous for the program.

National Rural Electric Cooperative Association ("NRECA") urges the FCC to support an MSS that could be a higher performance tier of speeds at 100 Mbps. download and 20 Mbps upload or a

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<sup>15</sup> Comments of Free Press, Dec. 8, 2021 ("Free Press Comments"), at pp. 17-18. NLC Comments, at p. 4 (NLC opposes any requirement to install a monitoring app to determine subscriber non-usage, due to subscriber privacy issues which may fuel a lack of trust in government programs.).

baseline symmetrical tier of 75/75 Mbps. to better support concurrent use of multiple devices within a household in this longer-term ACP program.<sup>16</sup> Likewise, Contra Costa County (California) favors an MSS in order to bring competitive service offerings to eligible ACP households.<sup>17</sup> Other providers oppose any MSS at all.<sup>18</sup>

CETF supports a recommended MSS be set forth in the ACP rules, to make clear the FCC’s expectation of ACP service offerings that will meet the needs of the eligible consumers for modern Internet communications. It is CETF’s experience that many of the current voluntary affordable offers of providers to low-income consumers did not contain enough data or speed to be useful to the consumer’s entire household over the full month of usage. Data caps, low speeds, throttling, latency, jitter, and expensive additional data tranches made the user experience less than ideal. While the data restrictions were eased due to the pandemic over the past 18 months, users of affordable plans faced critical issues that included inadequate data, slow speeds, and data caps. The FCC could adopt the same process to establish an MSS similar to the federal Lifeline program MSS for any Internet service offerings. In the ACP, the MSS should be a home (not mobile) broadband experience. From CETF’s point of view, what is important is that the eligible consumer be able to perform modern applications, such as video conferencing, teleworking, distance learning and telehealth applications the entire time

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<sup>16</sup> Comments of the National Rural Electric Cooperative Association, Dec. 8, 2021 (“NRECA Comments”), at pp. 4-5.

<sup>17</sup> Comments of Contra Costa County (California), Dec. 8, 2021 (“Contra Costa County Comments”), at p. 2.

<sup>18</sup> CTIA Comments, at pp. 22-24 (arguing that Act does not allow for MSS); Comments of NCTA – The Internet & Television Association, Dec. 8, 2021 (“NCTA Comments”), at pp. 17-18 (like EBB program, do not adopt MSS for ACP; there are robust service offerings already in the marketplace); Comments of T-Mobile, Dec. 8, 2021 (“T-Mobile Comments”), at pp. 13-14 (Congress directed to make available for the ACP “any” plan; service plans are best left to market forces and should not be mandated such as in the Lifeline MSS formula which has had to be waived three years).

the consumer has the service. Finally, CETF agrees with T-Mobile that the minimum service standards should evolve over time,<sup>19</sup> given the fast pace of innovation in Internet technology and uses.

**Adding Homeless Centers as an Eligible MDU to Provide Bulk Services.** E-Rate Central, Schools Health & Libraries Broadband Coalition (SHLB Coalition), the City of Boston, Massachusetts, Montgomery County, Maryland, Washington D.C. and Texas Coalition of Cities for Utility Issues (hereinafter “City of Boston et al”), and CETF all filed comments in support of adding “homeless centers” as eligible multiple dwelling units (MDUs) allowed to purchase in bulk for the unhoused persons and families they service.<sup>20</sup> CETF strongly agrees with E-Rate Central and SHLB when they argue that homeless centers are MDUs because of the many extremely low income persons who reside there on a short term basis.<sup>21</sup> Homeless centers are places where our very poorest and neediest citizens reside, even if just for a night or two. A person who is unhoused clearly meets ACP eligibility requirements as low income under the income test. Obtaining communications access is critical for an unhoused person to seek government assistance and social services, look for employment, and have contact to family and friends. CETF further agrees with E-Rate Central and SHLB that there are urgent needs for unhoused children to obtain a connected device and Internet service at a homeless center, in order to participate in distance learning and performing Internet

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<sup>19</sup> T-Mobile Comments, at pp. 13-14.

<sup>20</sup> Comments of E-Rate Central and Schools, Health & Libraries Broadband Coalition, Dec. 8, 2021 (“E-Rate Central/SHLB Comments”), at pp. 2-3; City of Boston, et al Comments, at p.16 (reliance on a “household” standard should not render ineligible those that might be in a family shelter, domestic, violence shelter or other temporary shelter); Comments of the California Emerging Technology Fund, Dec. 8, 2021 (“CETF Comments”), at pp. 3, 23 (“this is of great importance for unhoused children who need the Internet to perform school work and homework”). See Notice at para. 57 for list of multiple dwelling units, which are eligible to receive ACP benefits as a bulk broadband service. A homeless shelter should be defined to include similar facilities such as domestic violence shelters, family shelters and other temporary shelters as suggested by City of Boston, et al.

<sup>21</sup> E-Rate Central/SHLB Coalition Comments, at pp. 2-3.

enabled homework at the shelter. Absent Internet service and a connected device, an unhoused student risks falling behind educationally.

CETF agrees with E-Rate Central and SHLB that some of the ACP rules will need to be adjusted to the unique circumstances of a homeless shelter, or a domestic violence shelter. For example, Internet service may best be provided via robust Wi-Fi service, because the unhoused consumers lack a home address for wired internet service. Given the difficulty of tracking individual families, it is best to allow homeless centers to track discounts on capacity and occupancy instead as a bulk buyer. The FCC could adopt a presumption of eligibility of homeless shelter residents or domestic violence victims instead of having to validate each transient person or family. It might also base the discounts on shelter capacity and occupancy rates and apply the connected device discounts to a pool of useable connected devices rather than devices dedicated to a specific individual or family. Finally, the bulk purchaser should be allowed to be the shelter operator

**Expand MDU Definition to Include Multi-Family Serving Organizations, like Schools and Libraries.** A number of parties support expansion of the definition / eligibility of MDUs to include multi-family serving organizations, specifically for schools, school districts and libraries that are currently providing Internet services under the Emergency Connectivity Fund (ECF) program. For example, E-Rate Central and SHLB Coalition argued that the FCC should extend the ECF program to June 30, 2023, funds permitting.<sup>22</sup> They recommend that schools and libraries, which are currently permitted to engage in bulk purchasing under the ECF program, should also be permitted to participate

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<sup>22</sup> E-Rate Central/SHLB Coalition Comments, at p. 4.

in the ACP program so they can continue providing critical broadband services to low-income families after the ECF program sunsets.<sup>23</sup> CETF strongly agrees.

The ECF program provided bulk Internet services and connected devices for unconnected, low-income students and patrons during the pandemic. Once the ECF program terminates sometime next year, it is critically important that these schools and libraries be able to continue service to the needy unconnected families with students and library patrons under the ACP. Similar to entities like senior centers and dorms that provide bulk billing, these anchor institutions should receive similar treatment. The Commission should prepare a transition plan for these schools, school districts and libraries to transition from ECF to ACP smoothly in 2022. In this transition plan, the bulk billing entity is responsible for certifying the eligibility of the student or patron. To avoid duplicative support, households serviced under the ACP-discounted plan must consent to have their Internet services provided through the multi-family serving organization through the ACP bulk billing program.

**Associated Equipment Issues.** NCTA has asked the Commission to confirm that associated equipment remains eligible for reimbursement, and that equipment that is not separately itemized should be considered an element of the service and deemed eligible for support.<sup>24</sup> CETF concurs. The Commission should allow associated equipment such as modems, routers, hotspot devices and antennas to be funded under the ACP program on grounds it is equipment necessary for the transmission functions of Internet service offerings supported by the program. To remove it from ACP funding may allow providers to charge additional modem and router monthly fees or required hotspot or other fees that will cause the total price of the Internet service to exceed what is affordable (or expected to be charged) to the eligible ACP subscriber. The removal of the “associated equipment”

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<sup>23</sup> E-Rate Central/SHLB Coalition Comments, at pp. 4-6.

<sup>24</sup> NCTA Comments, at pp. 16-17.

phrase from the definition of “benefit” in the Infrastructure Act is not dispositive of this point, given this associated equipment is necessary for the transmission functions of the Internet service offering.

**Connected Devices.** A number of parties commented on the number of connected devices that an eligible household may obtain under the ACP program. For example, INCOMPAS asks the FCC to establish a mechanism via the National Lifeline Accountability Database (NLAD) to allow providers to ascertain if a household already received a device from another provider.<sup>25</sup> While CETF agrees that it is not appropriate for a household to obtain more than one device in any given year, some of the connected devices being provided are not of high quality, and may fail, or be lost, stolen or broken after heavy use after a year. Further, there may be a need for more than one device by a large family, because each member may have individual needs for access to a device. CETF supports the possibility of a second device after one or two years, should there be a demonstrated need for one (certification that first device broken, lost or stolen, or need for second device due to the size of the family, for example).

Benton points out in its comments that low-income families have looked to local community organizations to obtain connected devices and low-cost Internet service. Half that were surveyed said that making low-cost computers available was a key for broader digital inclusion efforts.<sup>26</sup> In light of the importance of the connected device and the fact many service providers are not providing connected devices in the EBB program, CETF requests the Commission focus on the device access problem and encourage creative partnerships between ISPs and device providers, in addition to considering the request to allow computer refurbishers to be eligible providers of ACP-subsidized

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<sup>25</sup> Comments of INCOMPAS, Dec. 8, 2021 (“INCOMPAS Comments”), at p. 9.

<sup>26</sup> Comments of the Benton Institute for Broadband & Society, Dec. 8, 2021 (“Benton Comments”), at pp. 16-18.

equipment. In California, CETF has helped encourage device give aways and schools sending devices home with students, as a connected device is very important to digital adoption efforts. No one thinks about home Internet without a working connected device.

**Definition of “Tablet” and “Mobile Phone.”** In its comments, CTIA requests that the connected device subsidy be applied to a device of its choosing, “consistent with the statute” including all tablets.<sup>27</sup> CTIA argues that the Commission should replace the definitions of “tablet” and “mobile phone” with “a tablet is a mobile device utilizing 4G or later-generation mobile technology; a mobile phone is any earlier-generation mobile device or feature phone.”<sup>28</sup> Consistent with the prior EBB decision and with the statutory language defining eligible connected devices, CETF supports the FCC’s decision to not support cellular phones or smartphones in the definition of “connected devices” for the ACP program. In CETF’s view, digital equity does not exist if a student must research or write a term paper on the small screen of a smartphone or on a low-end tablet with a small screen, low memory, and a small or cramped keyboard that makes typing difficult. If the FCC desires to allow tablets with cellular capabilities mentioned in the Notice, CETF recommends that the Commission provide specific requirements on the tablets to be ACP-eligible. For example, an acceptable tablet must have a qwerty keyboard, have a big enough screen to perform research on the web, have adequate memory, have video conferencing capability on common platforms like Zoom, Google Classroom, and Microsoft Teams, and must be able to connect to any Wi-Fi network and not be a “walled garden” device restricted to a single carrier’s network.

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<sup>27</sup> CTIA Comments, at p. 3.

<sup>28</sup> CTIA Comments, at pp. 17-20.

CETF has deep experience as to connected devices provided to low-income families by communications providers in relationship to an affordable broadband offer, often promised as a merger obligation or condition. Technical challenges encountered by recipients of these low-end devices include visibility of the screen, lack of adequate memory, difficulty getting the device to run video applications, slow processing as to be unable to work or chat in real-time, and poor sound quality. Any ACP eligible device will need to work in an environment for an adult working remotely, for a student in an online classroom, and support simultaneously a multi-app experience.

**Number of Connected Devices.** Many parties concur with the Notice to only allow one connected device per household in the ACP program. CETF suggests it would be reasonable for an eligible subscriber to obtain a new device every two years, especially since the connected devices are not going to be top of the line products but low-end connected devices. EBB policy was once a year as the program was temporary. By “household,” CETF refers to an economic household. There are many instances of multiple families living in one house or apartment, and each economic household should be entitled to a connected device. CETF further suggests that a household that received a connected device through the EBB program should be allowed to receive a second device through the ACP program after Year 2 of having the device. CETF suggests such a household be allowed to provide a certification and/or proof (e.g., police report, school confirmation) that the first connected device was broken, stolen, or lost, and be able to obtain a single replacement device.

**Credit Check Prohibitions.** A number of Internet service providers seek the ability to use credit checks for some related services, other than the ACP services. For example, ACA Connects argues that for credit checks, ACP providers should be able to retain flexibility to use credit checks when doing so is not a condition of obtaining ACP service. In the case of bundles, ACA Connects argues that credit checks are permissible if the household can receive the broadband component of the



bundle on a standalone basis without submitting to a credit check.<sup>29</sup> CETF, Free Press, and National Digital Inclusion Alliance (“NDIA”) disagree.<sup>30</sup> Eligible Internet service offerings -- or bundles containing ACP service -- should not have any mandatory credit checks. AT&T likewise makes an argument that credit bureau information should be allowed for things like qualifying the ACP customer to purchase a wireless handset, which is not an ACP benefit.<sup>31</sup> Others sought to allow credit checks for other services or reasons beside advertising ACP eligibility.<sup>32</sup> The FCC should proceed cautiously in this area. Credit checks function as a serious barrier to low-income households obtaining Internet service based on CETF’s experience. Thus, CETF recommends that if the eligible ACP service is part of a bundle, a credit check may not be run on the ACP service, the eligible connected device, or the bundle.

**Consumer Protections Against Upselling and Downselling.** Some parties express concern about proposed FCC rules to prevent “upselling” or “downselling.”<sup>33</sup> Like CETF, Free Press expresses concerns about participating providers “upselling” consumers on plan packages during or after the ACP sale.<sup>34</sup> Upselling should be prohibited. To avoid this issue, the FCC should require providers to

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<sup>29</sup> ACA Connects Comments, at pp. 26-27.

<sup>30</sup> Free Press Comments, at pp. 2-3 (the Commission should seek to minimize undue barriers to program participation by qualifying households.). NDIA Comments, at p.14 (FCC should prohibit providers from using the results of a credit check to determine which plans are made available to an ACP household. Any such credit check shall not result in delayed service approval or additional costs to the consumer.)

<sup>31</sup> AT&T Comments, at pp. 13-14.

<sup>32</sup> Comments of the Wireless Internet Service Providers Association, Dec. 8, 2021 (“WISPA Comments”), at pp. 7-8 (FCC should allow providers to use the results of a credit check to determine which other services equipment or devices not supported by ACP may be offered so long as household has access to ACP-supported equipment or devices or if it selects a bundled service plan). Verizon Comments, at pp. 11-13 (credit checks should be allowed to determine what equipment or devices may be offered to a household and whether to allow the customer to finance a device on a payment plan).

<sup>33</sup> See for example, Comments of Google Fiber, Dec. 8, 2021, at pp. 7-9.

<sup>34</sup> Free Press Comments, at pp. 20-22. By “upselling,” CETF means that the consumer called the provider to get a low-cost plan, and the customer service representative (CSR) sought to sell the

have dedicated customer service representatives (“CSRs”) for the ACP program that are trained in the program’s requirements.<sup>35</sup>

CETF also shares concerns about limitations on “downselling.”<sup>36</sup> CETF is concerned ‘downselling’ is a Trojan horse for company policy that does not allow customers to downgrade their service plan even if they want to do so. The FCC should not prohibit “downselling” or limit it to certain circumstances. Any consumer should be able to receive full information about available options and decide what is best for the household, without undue pressure from a provider’s CSR or having its choices reduced in any way, based for example, on an illegal credit check or responses to questions from the CSR whose marketing script may be oriented to upsell customers.

**Disclosures and Consumer Consent.** As noted above, some providers favor an opt-out process for EBB subscribers who are eligible for ACP. While this will facilitate enrollment to ACP, CETF voices concerns that these subscribers must be advised – and agree to -- any potential rate increase due to the \$20/month difference in the EBB and ACP discounts. As a result, CETF continues to support a simple mechanism for the provider to obtain the household’s affirmative consent to take EBB or ACP service prior to enrolling the household in the program. This can be a simple email or

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customer a higher priced plan or a bundled plan for a price that is higher than what the consumer intended to spend.

<sup>35</sup> CETF alerts the FCC to a problem that may arise from poorly trained customer service representatives as to the EBB program. Eligible subscribers should be allowed to sign-up for EBB or ACP directly with the provider as a first or second stop. Several examples have come to the attention of CETF in recent days where participating providers (both large California cable/broadband companies) with an approved Alternative Verification Process refused to accept the enrollment ID from a new consumer that signed up for EBB first and then contacted the participating providers.

<sup>36</sup> By “downselling” CETF refers to the provider trying to sell the consumer an inferior or lower quality service plan from the service plan that the consumer intended to buy or already had subscribed to during the EBB Program.

mailed document to the household's mailing address. The date of the consent and evidence of it should be retained electronically by the provider for audit purposes.

**Promoting Awareness About and Participation in the Affordable Connectivity Program.**

Many providers asked the FCC not to impose awareness campaign or advertising requirements or obligations on them.<sup>37</sup> CETF strongly disagrees. There is a long history of many major broadband providers that have declined to advertise or promote affordable broadband plans, unless mandated by a regulatory agency or compelled by a settlement agreement with a third party. CETF urges the FCC to require proactive marketing of the ACP by all participating providers to ensure as many eligible households learn about the program and may have the opportunity to take advantage of it. CETF observes that during the EBB, it did not see very much advertising about the EBB from the participating providers. The drafters of the Infrastructure Act wisely included outreach obligations on the FCC, and these should likewise be passed to any participating provider.

Like CETF, Common Cause urged the FCC to consider the unique needs of marginalized communities in its outreach efforts for the ACP program. This includes conducting outreach efforts in culturally competent materials that are available in as many non-English languages as necessary to reach the target eligible consumers. Outreach efforts should consider the cultural context surrounding

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<sup>37</sup> ACA Connects, at p. 25-26 (Smaller providers should only be required to make best efforts with regard to participation in public awareness campaigns and should not be expected to conduct them in the absence of collaboration partners like government agencies); NCTA Comments, at p. 23-24 (the Commission should avoid overly prescriptive rules regarding advertising of the program, but allow flexibility including as to the timing of notices); T-Mobile Comments, at pp. vi, 24-25 (adopt Lifeline program's advertising rules for ACP program; provide providers flexibility on how to advertise ACP); Verizon Comments, at pp. 20-21 (no Lifeline-style advertising requirements should be put on providers).

certain communities to understand what factors will motivate them to subscribe.<sup>38</sup> CETF strongly agrees with Common Cause. In California, critical provider and utility notices like service contracts and service termination notices are required to be in-language. This in-language requirement is very important for the limited English speaking and immigrant communities as it relates to financial decisions which they may better understand in their first language.

Los Angeles County and NDIA urge the FCC to develop a grant program for ACP program consumer outreach. NDIA suggest these groups be those with a proven track record of effectively its community.<sup>39</sup> Los Angeles County has embarked on a multi-platform, multi-language campaign to inform residents about the sunseting EBB program as well as the upcoming ACP. LA County urges the Commission to use a similar multi-platform strategy, deploying traditional media campaigns, social media campaigns, and hyperlocal media and in-person campaigns in order to maximize the public awareness of the program(s). As it considers the unique needs of each community, it recommends that the Commission should develop platform kits (e.g., social media toolkits, template communications, etc.) for use by local communities. LA County joins others in recommending the FCC consider awarding grants to local governments, including Counties, cities, and other entities, to further develop hyper-local campaigns, taking into consideration language needs, digital literacy, social media trends, relevant linear media, and other local factors.<sup>40</sup> CETF concurs with the comments of both of these

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<sup>38</sup> Comments of Common Cause, Dec. 8, 2021 (“Common Cause Comments”), at pp. 4-6; Public Comment of EveryoneOn, Dec. 8, 2021 (“EveryoneOn Comments”), at pp. 2-3; Public Knowledge/Common Sense Media Comments, at pp. 3-4; NLC Comments, at pp. 6-7.

<sup>39</sup> NDIA Comments, at pp. 17-18.

<sup>40</sup> LA County Comments, at p. 6. In November 2021, Los Angeles County Board of Supervisors directed its Internal Services Department to use and promote existing subsidy programs to ensure low-income residents could connect to quality affordable Internet. The County agency asked CETF to partner with it to perform outreach on the EBB and now ACP. CETF has been operating a public awareness program on a limited scale for a few years in partnership with Frontier, and thus, CETF has the material, messages and motivation to ask the advertising firm to adapt the CETF collateral for LA

parties, and urges the Commission to adopt outreach policies for target communities by community groups it trusts.

**Transition to the Affordable Connectivity Program.** There is broad agreement on the Notice's proposal for a smooth process for EBB-qualified households to transition to the ACP during the 60-day transition period. Because the eligibility for ACP only changed a small amount from the predecessor EBB program, the bulk of the EBB subscribers should be able to be smoothly transitioned. For EBB subscribers who do not qualify for ACP, they should be given at least two notices 30 days in advance to disenroll in time to not be billed a normal retail rate.

A number of providers object to the Notice's suggestion at page 122 that an enrolled EBB subscriber must opt-in or affirmatively request enrollment in the ACP.<sup>41</sup> CETF supports an opt-in process, because the benefit level is dropping from \$50 a month to \$30 a month for all but the Tribal and high-cost households. In CETF's view, customers need to be notified of the change in programs and price and should consent to the new program parameters. The opt-in notice should be a simple acknowledgement or notice, where the subscriber checks the box, it wishes to enroll in ACP.

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County's EBB/ACP campaign. The effort launched December 6, 2021, with LA County adding funds paying for additional media buys. To date, over 2,000 qualified subscribers were signed up to date. CETF would be happy to share more details with the FCC should it decide to conduct regional or national advertising. This is an example of a positive partnership of a local agency and a non-profit organization that is deeply experienced in digital adoption issues.

<sup>41</sup> ACA Connects Comments, at p. 4; INCOMPAS Comments, at pp. 6-7 (only get an opt-in for new customers of EBB customers changing providers, otherwise existing EBB customers are automatically enrolled in ACP); AT&T Comments, at pp. 3-8 (having a burdensome opt-in process will cause customer confusion and frustration; recommends a single 30 day notice); NCTA Comments, at pp. 5-9 (Send notices but do not adopt an opt-in process). WISPA Comments, at p.2 (no opt-in requirement); Verizon Comments, at pp. 5-6 (no opt-in requirement but order notices to customers)

CETF appreciates the opportunity to file Reply Comments with the FCC on the important ACP program. CETF urges the Commission to act quickly to ensure no disruption to current EBB services.

Sincerely yours,

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